

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
PARAMOUNT PICTURES CORPORATION)

For Appellant: Marvin Rosenblum
Manager, State Taxes

For Respondent: Bruce W. Walker
Chief Counsel

Claudia K. Land
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Paramount Pictures Corporation against proposed assessments of additional franchise tax in the amounts of **\$1,194.94, \$28,259.70** and **\$22,222.31** for the income years ended April 30, 1966, April 30, 1967, and February 29, 1968, respectively, and a penalty in the amount of **\$5,555.58** for the income year ended February 29, 1968.

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'Two issues are presented by this appeal:' first, whether or not appellant may deduct certain taxes paid by it to foreign countries and, second, whether or not respondent's imposition of a 25 percent delinquent filing penalty for the income year ended February 29, 1968, was proper.

D.P.I. Liquidating Corporation, formerly Desilu Productions, Inc. (DPI), was a television film production company with its headquarters in California. It produced television series and shows and leased its studio facilities to independent producers. Desilu Sales, Inc. (Sales) was 95 percent owned by, and acted as distributor for, DPI. During the appeal years, DPI paid taxes to **various foreign** countries, apparently in connection with the distribution of its productions.

On July 31, 1967, Sales was **merged into DPI**. On February 27, 1968, DPI was merged into appellant. Appellant's fiscal year ends July 31, and **DPI's ended** April 30. Appellant was required by statute to file a return for DPI **covering the** short period ended February 29, 1968, but no return was ever filed.

An audit of appellant resulted in additions to **DPI's** income during the short year ended February 29, 1968, as well as the other years on appeal. The additions were due to federal adjustments, which are not in dispute here, and the disputed disallowance of deductions claimed for taxes paid by DPI to various foreign nations. In addition, a 25 percent delinquent filing penalty was imposed for the short year ended February 29, 1968. Appellant paid the proposed assessment amounts attributable to uncontested **items, leaving** only the amounts related to the disallowed foreign tax payments and the 25 percent penalty in controversy. Obviously, any amounts already paid by appellant will be credited against the proposed assessments.

With respect to the disallowed **foreign tax** deduction, appellant has made no effort to produce supporting evidence or arguments. This is consistent with the suggestion by both parties that Appeal of MCA, Inc., decided by this board October 18, 1977, is determinative of this issue. There, on very similar facts, we held the foreign taxes paid were nondeductible under Revenue and Taxation Code section 24345, subdivision (a) (2)(A), where such **taxes** were imposed on or measured by either net or gross **income** rather than gross receipts. We believe that our decision in MCA, Inc.,

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supra, is controlling here, and find that respondent properly disallowed the claimed deduction for foreign taxes paid.

Appellant does not dispute that a return was required for the short period ended February 29, 1968, or that the required return was not so filed. However, it maintains that the 25 percent penalty for failure to file should not be imposed because the **failure to file** was due to confusion and personnel changes related to the merger.

A penalty of not more than 25 **percent .of** the tax due is imposed for failure to file a return-unless the failure is due to reasonable cause. (Rev. & Tax. Code, § 25931.) Reasonable cause exists where the taxpayer has exercised ordinary business care and prudence. (Appeal of Citicorp Leasing, Inc., Cal. St. Bd. of Equal., Jan. 6, 1976.) Care and prudence would dictate that regular corporate responsibilities, such as filing a tax return, would not be neglected because of exceptional corporate activities. "If appellant chooses to sacrifice the timeliness of one aspect of its business affairs in order to pursue other endeavors, it must bear the consequences." (Appeal of Loew's San Francisco Hotel Corp., Cal. St. Bd. of Equal., Sept. 17, 1973.)

Appellant also argues that reasonable cause for failure to file exists because it believed no tax was due pursuant to Revenue and Taxation Code section 23332. This argument appears to have been mooted since appellant has agreed with respondent's conclusion that section 23332 was inapplicable. In any event, appellant has not shown that reasonable cause existed for its failure to file a return,

Revenue and Taxation Code section 23332 provides for proration of tax for the year in which a **cor-**poration is dissolved. **It** specifically states that its provisions are not applicable where corporate existence or business ceases due to a **merger**. Even if this section did apply, at least the minimum tax imposed by Revenue and Taxation Code section 23151 would have been due and a return would be required by Revenue and Taxation Code section 25401. If appellant believed that no tax was due, that belief was clearly unreasonable and did not constitute "business care and prudence." Respondent's imposition of the 25 percent penalty was proper.

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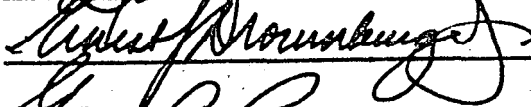
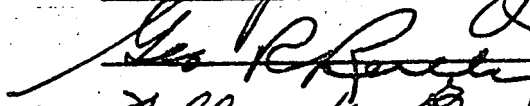
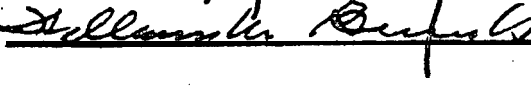
For the reasons stated above, we sustain
respondent's action..

O R D E R

Pursuant to the views expressed in the opinion
of the board on file in this proceeding, and good cause
appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED **AND DECREED**,
pursuant to section 25667 of the Revenue and Taxation
Code, that the action of the, Franchise Tax Board on the
protest of Paramount Pictures Corporation against pro-
posed assessments of additional franchise tax in the
amounts of \$1,194.94, \$28,259.70 and \$27,777.89 (includ-
ing penalty) for the income years ended April 30, 1966,
April 30, 1967, and February 29, 1968, respectively, be
and the same is hereby sustained.

Done at Sacramento, California, this 18th day
of August , 1980, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member